

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



In the Matter of)
)
)

Distribution of the)
2011 Satellite Royalty Funds)
)

Docket No. 2012-D CRR SD 2011

**MOTION OF PHASE I CLAIMANTS
FOR PARTIAL DISTRIBUTION**

The undersigned representatives of all the Phase I claimant categories to which Section 119 satellite royalties have been allocated in prior satellite distribution proceedings ("Phase I Parties")¹ submit the following motion to the Copyright Royalty Judges ("Judges") for partial distribution of 50% of the 2011 satellite royalty funds (the "2011 Funds").

The Phase I Parties respectfully request that the Judges distribute the 2011 Funds by no later than March 15, 2013. According to the Licensing Division of the Copyright Office (the "Office"), as of September 30, 2012, the amount of the 2011 Funds available for distribution totals approximately \$93,692,889.36. Based on this amount, a 50% partial distribution would total \$46,846,444.68. The circumstances warrant a partial distribution of 50% of the 2011 Funds as soon as possible.

I. The Copyright Royalty Judges Have Authority to Order Precontroversy Partial Distributions.

Section 119 of the Copyright Act favors the early distribution of satellite royalties. See 17 U.S.C. § 119(b)(5)(C). Chapter 8 of the Copyright Act vests the Judges with ample

¹ Public Television Claimants, the Canadian Claimants, and National Public Radio, which receive Phase I shares of cable royalties, do not claim Phase I shares of the satellite royalty funds.

statutory authority to order the precontroversy distribution of satellite royalties. In the Copyright Royalty Judges Program Technical Corrections Act, Congress amended Section 801(b)(3)(C) to clarify that a partial distribution of royalties could be made at any time after the tiling of claims. Pub. L. No. 109-303 §§ 3, 5, 109th Cong., 2nd Sess. (2006), 120 Stat. 1478. Congress reaffirmed the Judges' authority to partially distribute statutory royalties in advance of the declaration of a controversy. Section 801(b)(3)(C) provides:

Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section . . . 119 . . . may, upon motion of one or more of the claimants and after publication in the *Federal Register* of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants –

- (i) agree to the partial distribution;
- (ii) sign an agreement obligating them to return any excess amounts to the extent necessary to comply with the final determination on the distribution of the fees made under subparagraph (B);
- (iii) file the agreement with the Copyright Royalty Judges; and
- (iv) agree that such funds are available for distribution.

17 U.S.C. § 801(b)(3)(C). The statutorily prescribed deadline for filing claims for the 2011 Funds has passed. Furthermore, the Phase I Parties (1) agree to the partial distribution; (2) agree that the requested funds are available for distribution; (3) agree to sign the separate agreement contemplated in Section 801(b)(3)(C)(ii) obligating them to return any excess royalty amounts received, in a form to be provided by the Office or the Copyright Royalty Judges, in advance of the requested distribution; and (4) agree to file such an agreement with the Copyright

Royalty Judges or as otherwise directed.

II. Distribution of 50% of the 2011 Funds is Warranted.

The Judges have consistently granted the Phase I Parties' requests for 50% distributions of the annual cable and satellite royalty funds, including recent partial distributions of the 2010 cable and satellite royalty funds. *See* Order in Docket No. 2012-4 CRB 2010 CD (Sept. 14, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 cable royalty funds); Order in Docket No. 2012-5 CRB 2010 SD (Sept. 18, 2012) (granting Phase I Parties' request for a 50% partial distribution of the 2010 satellite royalty funds); *see also* Order in Docket No. 2011-7 CRB 2009 CD (Oct. 13, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2009 cable royalty funds); Order in Docket No. 2011-8 CRB 2009 SD (Oct. 13, 2011) (granting Phase I Parties' request for a 50% partial distribution of the 2009 satellite funds).

A partial distribution of the 2011 Funds would ensure that Phase I Parties are not deprived of a substantial amount of the royalties that belong to them during a period that may be several years long. In the past, the Copyright Office recognized that the earliest possible receipt of the maximum available royalties by copyright owners is an important objective of the Copyright Act. *See, e.g.,* Order in Docket Nos. 94 CARP (92-CD & 93-CD) at 2, 5 (Sept. 26, 1994) ("September 26, 1994 Order") (Office distributed 80% of the 1992 and 1993 cable royalties, noting that the "intent of the law favored early distribution"); *see also* Order in Docket No. 94 CARP (92-CD & 93-CD) at 2 (Sept. 12, 1994) ("September 12, 1994 Order") (referring to the "overall intent of the subparagraphs in [Section 111(d)(4)] in favor of early distributions"). Accordingly, pre-proceeding distributions of satellite royalties under Section 119(b)(5)(C) may be made in circumstances where there may be a significant delay

between the filing of claims and the initiation of proceedings. *See Order, In the Matter of Distribution of the 2001, 2002 and 2003 Satellite Royalty Funds*, Docket No. 2005-2 CRB SD 2001-2003 (Sept. 13, 2005) (making a precontroversy partial distribution of satellite royalties “without prejudice concerning the final distribution percentages that shall be determined at a future time”).

A distribution of at least 50% of the 2011 Funds would ensure that the Phase I Parties are not further deprived of a substantial amount of the royalties paid for the use of their copyrighted works. The Phase I Parties have agreed to the amount of the proposed partial distribution. Furthermore, the Phase I Parties believe that the size of the remaining undistributed amount, along with the parties’ commitment to repay any excess distributions, would be more than sufficient to satisfy any Phase II claims and the costs of any distribution proceedings involving these funds.

Finally, because the amounts to be distributed to each Phase I Party will remain confidential, the Phase I Parties further move to have the distribution made in bulk to a common agent for all the Parties. In this regard, the Phase I Parties have signed a confidential distribution agreement with the Office of the Commissioner of Baseball (“Baseball”), agreeing that Baseball will serve as the common agent for the distribution of royalties among the individual Phase I Parties.²

² Although this request seeks partial distribution of only 50% of the available royalties, the Phase I Parties do not concede that 50% is the maximum partial distribution of available cable or satellite royalties that may properly be made for any given year.

CONCLUSION


For the reasons set forth above, the Phase I Parties respectfully request that the Judges, pursuant to 17 U.S.C. § 801(b)(3)(C), publish for comment in the *Federal Register* the proposed partial distribution of 50% of the satellite royalties held in the 2011 Funds, and thereafter, grant the Motion and order a 50% partial distribution of the 2011 Funds to the specified common agent by no later than March 15, 2013.

Respectfully submitted,


PROGRAM SUPPLIERS


Gregory O. Olaniran
DC Bar No. 455784
Lucy Holmes Plovnick
DC Bar No. 488752
MITCHELL SILBERBERG & KNUPP LLP
1818 N Street NW, 8th Floor
Washington, DC 20036
Telephone: (202) 355-7917
Facsimile: (202) 355-7887
goo@msk.com
lhp@msk.com

JOINT SPORTS CLAIMANTS


Robert Alan Garrett
DC Bar No. 239681
Stephen K. Marsh
DC Bar No. 470765
James R. Wood
DC Bar No. 1007610
ARNOLD & PORTER LLP
555 Twelfth Street, NW
Washington, DC 20004-1206
Telephone: (202) 942-5000
Fax: (202) 942-5999
robert.garrett@aporter.com
stephen.marsh@aporter.com

BROADCASTER CLAIMANTS GROUP


John I. Stewart, Jr.
DC Bar No. 913905
Jennifer H. Burdman
DC Bar No. 495555
Ann Mace
DC Bar No. 980845
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004-2595
Telephone: (202) 624-2685
Fax: (202) 628-5116
jstewart@crowell.com

MUSIC CLAIMANTS

AMERICAN SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS

Samuel Mosenkis by JPM

Joan M. McGivern
Samuel Mosenkis
N.Y.# 2628915
ASCAP
One Lincoln Plaza
New York, NY 10023
Telephone: (212) 621-6450
Fax: (212) 787-1381
smosenkis@ascap.com

BROADCAST MUSIC, INC.

Joseph J. DiMona by JPM

Joseph J. DiMona
DC Bar No. 412159
BROADCAST MUSIC, INC.
7 World Trade Center
250 Greenwich Street
New York, NY 10007-0030
Telephone: (212) 220-3149
Fax: (212) 220-4447
jdimona@bmi.com

Michael J. Remington by JPM

Michael J. Remington
DC Bar No. 344127
Jeffrey J. Lopez
DC Bar No. 453052
DRINKER BIDDLE & REATH LLP
1500 K Street, NW – Suite 1100
Washington, DC 20005
Telephone: (202) 842-8800
Fax: (202) 842-8465
michael.remington@dbr.com

SESAC, INC.

John C. Beiter by JPM

John C. Beiter
TN Bar No. 12564
Shackelford, Zumwalt & Hayes
1014 16th Avenue South
Nashville, TN 37212
Phone: 615.256.7200
Fax: 615.256.7106
Email: jbeiter@shacklaw.net

DEVOTIONAL CLAIMANTS

Clifford M. Harrington by JRW

Clifford M. Harrington
DC Bar No. 218107
PILLSBURY WINTHROP SHAW
PITTMAN LLP
2300 N Street, NW
Washington, DC 20037
Telephone: (202) 663-8525
Fax: (202) 663-8007
clifford.harrington@pillsburylaw.com

Arnold P. Lutzker by JRW

Arnold P. Lutzker
DC Bar No. 101816
Allison L. Rapp
Member Maryland Bar
Jeannette M. Carmadella
DC Bar No. 500586
LUTZKER & LUTZKER LLP
1233 20th Street, NW, Suite 703
Washington, DC 20036
Telephone: (202) 408-7600
Fax: (202) 408-7677
arnie@lutzker.com

Edward S. Hammerman by JRW

Edward S. Hammerman
DC Bar No. 460506
HAMMERMAN, PLLC
5335 Wisconsin Avenue, NW
Suite 440
Washington, DC 20015-2052
Telephone: (202) 686-2887
Fax: (202) 318-5633
ted@copyrightroyalties.com

W. Thad Adams III by JRW

W. Thad Adams III
N.C. Bar No. 000020
ADAMS EVANS PA
Suite 2350 Charlotte Plaza
201 South College Street
Charlotte, NC 28244
Telephone: (704) 375-9249
Fax: (704) 375-0729
wta@adamspat.com

Wendell R. Bird by JRW

Wendell R. Bird, P.C.
Ga. Bar No. 057875
Jonathan T. McCants
Ga. Bar No. 480485
BIRD, LOEHL, BRITTAIN & McCANTS,
LLC
1150 Monarch Plaza
3414 Peachtree Road, N.E.
Atlanta, GA 30326
Telephone: (404) 264-9400
Fax: (404) 365-9731
jmccants@birdlawfirm.com

George R. Grange by JRW

George R. Grange, Esq..
(VA Bar No. 34120)
Kenneth E. Liu, Esq.
(VA Bar No. 42327)
GAMMON & GRANGE, P.C.
8280 Greensboro Drive, 7th Floor
McLean, VA 22102

Dated: December 12, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of December 2012, a copy of the foregoing Motion of Phase I Claimants for Partial Distribution of the 2011 Satellite Royalty Funds was sent by Federal Express to the individuals listed below:

Brian D. Boydston
Pick & Boydston LLP
10786 Le Conte Avenue
Los Angeles, CA 90024

Gregory H. Guillot, PC
13455 Noel Road
Suite 1000
Dallas, TX 75240 USA



Troy Strunkey